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IN THE

Supreme Court of the United States

ELISA ENCARNACION on behalf of ARLENE GEORGE,
ANA LORA on behalf of MICHELLE TAVARES,
HORTENSIA LACAYO, MATHEW LACAYO,
and ROSA VELOZ on behalf of BEN-HEMIR COLLADO,

Petitioners,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Respondents.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* CHILDREN'S DEFENSE FUND, NATIONAL ALLIANCE ON MENTAL ILLNESS, MENTAL HEALTH AMERICA, NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS, AND NATIONAL ASSOCIATION OF SOCIAL WORKERS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

Amici's interest in this case derives from a shared concern for the welfare of children with serious impairments and their qualification for Supplemental Security Income ("SSI") benefits and the Medicaid that usually accompanies those benefits. The "non-combination" policy followed by the Social Security Administration (the "SSA") is contrary to sound medical practice and science, as well as common sense, and improperly and illegally denies SSI benefits to children with very serious impairments. Specifically, *Amici* are concerned that the SSA's non-combination policy discounts the cumulative effects of multiple, less than "marked" limitations of functioning in determining which children are eligible to receive SSI benefits. Because of these concerns, and because *Amici* have extensive expertise and experience in providing diagnostic and remedial medical services on behalf of children with disabilities, *Amici* respectfully submit this brief in support of the petition for a writ of certiorari.[1]

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[1] Pursuant to Supreme Court Rule 37.2(a), letters of consent of all parties are being filed with the Clerk of the Court together with this brief. Pursuant to Supreme Court Rule 37.6, *Amici* state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *Amici* and their counsel made a monetary contribution to the preparation or submission of this brief.

Amicus the Children's Defense Fund ("CDF") has for more than thirty-five years been advocating to ensure that every child in America has a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF pays particular attention to the needs of poor and minority children and those with disabilities. In its advocacy for children, CDF has seen first-hand the critical role the federal SSI program plays in securing the futures of children with a wide range of physical, emotional and mental disabilities. SSI helps the families of these children afford the specialized treatment required to meet their basic and special needs by giving them access to Medicaid and offers them other needed supports to assist them in becoming self-sufficient adults. CDF was a lead *amicus* party in the seminal SSI childhood disability case of *Sullivan v. Zebley*, 493 U.S. 521 (1990), and was an *amicus* party at an earlier stage in *Encarnacion* in the Second Circuit.

Amicus National Alliance on Mental Illness ("NAMI") is one of the nation's largest organizations representing children, adolescents, and adults living with mental illness and their families. Through more than 1,100 state and local affiliates across all 50 states, NAMI engages in education, support and advocacy on behalf of these individuals. NAMI is deeply concerned that the SSA's "non-combination" policy is contrary to sound medical

and professional practice and gravely impacts the lives of thousands of NAMI's members.

Amicus Mental Health America ("MHA") (formerly National Mental Health Association) with its 340 state and local affiliates is the nation's oldest advocacy organization dedicated to all aspects of mental health and mental illness. MHA recognizes the critical role of the SSI program in helping assure family security and in providing medical care and services needed to help children with mental health disorders reach their full potential. With an estimated two-thirds of children who have mental health disorders not receiving needed treatment and at risk of more serious illness and even suicide, MHA is concerned that the SSA provide fair and accurate assessments of children's disabilities to ensure access to needed SSI benefits and Medicaid health insurance coverage. MHA was an *amicus* party in *Zebley*.

Amicus National Association of School Psychologists ("NASP") represents over 25,000 school psychologists and related professionals throughout the United States and 25 foreign countries, and is the world's largest organization of school psychologists. NASP promotes the rights, welfare, education, and mental health of children and youth, and advances the profession of school psychology. A critical contribution made by school psychologists is the provision of comprehensive evaluations of student academic, cognitive, social-emotional and behavioral abilities. These evaluations are often used to determine the presence of a disability and eligibili-

ty for special education and related services, and considered as critical evidence in determining eligibility for SSI benefits.

NASP is concerned that the SSA's current "non-combination" policy is inconsistent with best practices in the comprehensive evaluation of children. When evaluating a child for a disability, it is imperative that the "whole child" be considered through multidisciplinary, comprehensive assessments, including "functional" assessments. NASP's "best practices" provide that abilities and limitations need to be considered holistically and in combination as part of any competent evaluation. NASP believes that all evaluation data collected be considered from a "comprehensive" perspective, as opposed to one that prevents a realistic weighing of a combination of impairments.

Amicus National Association of Social Workers ("NASW"), established in 1955, is the largest association of professional social workers in the world, with 145,000 members. NASW provides continuing education, enforces the *NASW Code of Ethics*, conducts research, publishes books and studies, promulgates professional standards and criteria, and develops policy statements on issues of importance to social workers and the clients they serve. NASW shares the concern of other *amici* that SSA's non-combination policy improperly denies children an appropriate holistic assessment of the combined impact of all of their disabilities.

SUMMARY OF THE ARGUMENT

This case concerns the primary method by which the SSA determines whether a child is disabled for purposes of entitlement to SSI benefits. In evaluating disability under this method, the SSA first determines whether a child has one or more physical or mental impairments that affect functioning in any of six defined "domains" or areas of functioning and then evaluates the level of combined "limitation" only *within* each such domain. In order to qualify for SSI benefits, a child must be evaluated as having an "extreme" limitation in at least one domain or "marked" limitations in two or more domains. If a child's functional limitations in a given domain do not rise to what is considered a "marked" limitation, the SSA gives that limitation no weight whatsoever. The SSA's evaluation policy does not allow less than "marked" limitations in given domains to be combined with limitations in other domains in evaluating whether a child is disabled. In other words, the policy does not, in many cases, give weight to all limitations or consider their true combined impact. As a result, a child with significant but less than marked limitations in numerous domains is considered by the SSA as having no limitations for purposes of adjudicating entitlement to SSI benefits—even if the combined impact of such limitations is the equivalent of two marked or one extreme limitation.

This "non-combination" policy–that is, the policy not to aggregate, or even consider, functional limitations that have been deemed "less than marked,"

regardless of their cumulative impact on the child's functioning–is contrary to accepted medical and scientific standards and procedures. Because children with multiple impairments do not necessarily experience the resulting limitations in functioning in insular "domains," any process that isolates limitations into separate social constructs without also considering the overall impact on the child's functioning is guaranteed to exclude and neglect very serious limitations, is inherently irrational, and is inconsistent with modern methods of treatment and analysis. In other words, the domain methodology may be a useful evaluative tool, but it must be recognized as a somewhat artificial construct that if applied literally and rigidly may interfere with an accurate assessment of the combined impact of all impairments on overall function. As a result, the SSA's "non-combination" policy inevitably denies benefits to many children with very serious limitations, including children who may be as disabled, or even more disabled, than others who have been found eligible for SSI benefits under the SSA's policies.

Given the critical importance of SSI financial assistance and access to Medicaid health insurance to low-income families with disabled children and the high incidence of children with multiple impairments, it is important for the Court to grant review in this case. Low income disabled children rarely have legal counsel, very few children's disability cases are litigated in the federal courts and even fewer are appealed. For example, it took

16 years from the inception of the SSI childhood disability program for this Court to address SSA's fundamental misreading of the Act via the *Zebley* case. The instant case, with a developed record and substantial *amici* engagement, represents a rare opportunity to address the legality of SSA's "non-combination" policy and ensure that all children have their cases adjudicated in a fair and lawful manner.

Despite the concerns described above, the Second Circuit upheld SSA's "non-combination" policy as a valid application of Congress's mandate that the agency consider "the combined effect of all of the individual's impairments" throughout the disability determination process. 42 U.S.C. § 1382c(a)(3)(G) (2006). Simply stated, that is an untenable holding in light of the statute's clear directive and this Court's ruling in *Zebley*, which held that the Social Security Act requires an evaluation of overall function. 493 U.S. at 528-29. Given the importance of the correct standard being applied to all disabled child claimants nation-wide, and the considerable impact on the security and well-being of many severely disability children with multiple impairments, this Court should grant certiorari.

ARGUMENT

The Second Circuit's decision upholds the SSA's non-combination policy, a policy that is contrary to commonly accepted medical practice and science, contrary to Congress's instruction in 42 U.S.C.

§ 1382c(a)(3)(G) and contrary to the *Zebley* decision. This Court should grant the petition for certiorari, conduct a further review of the SSA's "non-combination" policy, and reverse the Second Circuit's decision upholding that policy.

I. THE SSA'S "NON-COMBINATION" POLICY CONFLICTS WITH THE MEDICAL PROFESSION'S HOLISTIC APPROACH TO THE EVALUATION OF CHILDREN AND THEIR DISABILITIES

In initially enacting the SSI disability program for children, Congress recognized that

> disabled children who live in low-income households are certainly among the most disadvantaged of all Americans and that they are deserving of special assistance in order to help them become self-supporting members of our society . . . their needs are often greater than those of nondisabled children.

H.R. Rep. No. 92-231, at 147-48 (1971), *as reprinted in* 1972 U.S.C.C.A.N. 4989, 5133. SSI helps to improve the financial and health care needs of some of our nation's most vulnerable children and the families who care for them, and to ensure that these children reach their full potential as adults. The SSI program for children serves four primary purposes: (1) insuring life's basic necessities to allow the disabled child to live at home or in an appropriate setting; (2) meeting added costs for raising and caring for the child; (3) promoting the

development of the child; and (4) offsetting lost income of the parent(s) who must care for the child. NAT'L COMM'N ON CHILDHOOD DISABILITY, REPORT TO CONGRESS: THE SUPPLEMENTAL SECURITY INCOME FOR CHILDREN WITH DISABILITIES 40 (1995). In most states, including New York, eligibility for SSI also qualifies the disabled child for the Medicaid program.[2]

SSI is an essential resource that is vital for children with serious impairments. Denying any otherwise eligible child the economic support to live in stable surroundings, to access the basic necessities of life, medications, and personal aids or to attend regular therapy, can cause irreparable damage. *See, e.g.*, Vonnie C. McLoyd, *Socioeconomic Disadvantage and Child Development*, 53 AM. PSYCHOL. 185, 190-94 (1998). Denial of SSI to a child who might otherwise be qualified under a more appropriate or adequate assessment of her impairments could mean that the child will not reach her full potential and become self-sufficient.

The current SSA standard for disability considers whether a child has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe func-

[2] As of January 1, 2003, 39 states and the District of Columbia considered all SSI recipients to be eligible for Medicaid. This covers approximately 84% of all SSI recipients nationwide. STAFF OF H. COMM. ON WAYS & MEANS, 110TH CONG., BACKGROUND MATERIAL AND DATA ON THE PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, 3-18 (Comm. Print 2008).

tional limitations. 20 C.F.R. § 416.906 (2009). In assessing whether a child meets this standard, SSA first considers whether she has one or more impairments that are "severe"—a relatively low threshold finding. 20 C.F.R. § 416.924(c) (2009). If the child does have a severe impairment, the SSA then determines whether the impairment either (1) meets or is medically equivalent to a listed impairment, or (2) "functionally equals the listings." *Id.* § 416.924(a). At issue in this case is the second method of determining disability.

For purposes of deciding whether a child's impairment (or combination of impairments) "functionally equals the listings," the SSA sets out six "domains of functioning:" (1) acquiring and using information, (2) interacting and relating with others, (3) moving about and manipulating objects, (4) caring for yourself, and (5) attending and completing tasks, and (6) health and physical well-being. *Id.* § 416.926a(b)(1). Within each domain, the SSA rates the child's limitations as "less than marked," "marked," or "extreme." *See id.* § 416.926a(a), (d). A child's impairments will "functionally equal the listings" if she has an "extreme" limitation in one domain or "marked" limitations in two domains. *See, e.g., id.* § 416.926a(a). In assessing the degree of functional deficit in a particular domain, SSA must take into account the cumulative and interactive effects of all impairments that a child may experience. *Id.* § 416.926a(e).

However, under the unpublished policy challenged in this case, if an adjudicator determines

that the functional deficit in a particular domain is not marked or extreme, that deficit is not considered at all. This informal "non-combination policy," set forth only in rulebooks and training manuals, instructs adjudicators not to consider the interaction between limitations in separate domains in determining a child's overall level of functioning. *See* Pet. App. 9a; C.A. App. 1068, 1756-59. Thus, after the SSA has considered the impact of all of a claimant's limitations within each particular domain, it assigns no weight to any impairment that does not contribute to at least a "marked" limitation in a particular domain. Adjudicators cannot adjust the level of limitation in one domain to reflect the cumulative and interactive impact that significant but less-than-marked limitations in other domains may have on the overall level of functioning.

This "non-combination" approach stands in stark contrast to sound medical practice and mental health practice and irrationally leads to the denial of benefits for children whom any reasonable medical or mental health professional would find to be just as disabled as many children qualifying under the SSA's regulations. The rigid confinement of the evaluation of functional loss only within discrete domains creates an artificial barrier to a sound assessment of a child's situation.

The medical profession considers it important to instead assess the overall burden imposed on a child to properly determine the severity of a child's impairment. *See, e.g.*, Dennis P. Hogan et al., *Func-*

tional Limitations and Key Indicators of Well-Being in Children with Disability, 154 ARCHIVES PEDIATRIC & ADOLESCENT MED. 1042, 1045 (2000). Scientifically, determining this overall burden requires a global, holistic assessment of the child. The medical profession, including psychiatrists and psychologists, has long used functional evaluations to best describe and evaluate patients, employing a whole person approach to the evaluation of children and their disabilities. *See*, *e.g.*, AM. MED. ASS'N, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT 4 (6th ed. 2008) (the "AMA Guides").

In *Zebley*, the medical community was unanimous in assuring the Court that the profession could and regularly did make such global functional evaluations. *See* 493 U.S. at 541 n.22 (citing to the American Medical Association's *amicus* brief). As this Court observed: "No decision process restricted to comparing claimant's medical evidence to a fixed set of medical criteria can respond adequately to the infinite variety of medical conditions and combinations thereof . . . ." *Id.* at 539. Contrary to the SSA's pre-*Zebley* insistence that such functional evaluation was impracticable, the Court properly relied upon the unanimous representation of the medical community that a global assessment of function, rather than strict consideration only of the medical criteria embodied in the listings, was not only practicable but a more accurate way of assessing whether children are in fact disabled.

Failing to give weight to impairments causing significant loss of function is contrary to the whole child approach followed by modern medicine. The distinctive ways that an impairment may affect an individual child are augmented when multiple impairments are involved because:

> [t]here is a specific or actual additive constraint to human development caused by the presence of more than one disability. When a deaf child cannot utilize manual language because of a visual impairment or a motor dysfunction, the child is further restricted. The complication of a serious mobility limitation intrudes upon the potential of a child with mental retardation for access to learning experiences.

Id. at 607-08. Because children with multiple impairments do not experience atomized or insular limitations in functioning, any process that isolates limitations into separate domains of functioning without going on to consider the overall impact on the child's functioning is guaranteed to exclude, or, through sheer oversight, neglect to consider very serious limitations. *See* RICHARD P. NELSON & ALLEN C. CROCKER, *The Child with Multiple Disabilities*, in DEVELOPMENTAL–BEHAVIORAL PEDIATRICS 607 (William B. Carey et al., eds., 3d ed. 1999); WILLIAM B. CAREY, *Comprehensive Formulation of Assessment*, in DEVELOPMENTAL–BEHAVIORAL PEDIATRICS 841 (William B. Carey et al., eds., 4th ed. 2009) ("Unless all pertinent strengths and weaknesses of the child and his or her situation are

assembled into a single formulation, there is a real danger that some complication or critical redeeming aspects of a child will be overlooked.").

Comprehensive functional assessments of childhood impairments require specific knowledge about the consequences of any and all impairments and how these affect the child in day-to-day living. MARY RUDOLF & MALCOLM LEVENE, PAEDIATRICS AND CHILD HEALTH 284 (2d ed. 2006) ("The development of a long-term medical condition in a child affects a family on a number of levels—practical, social and psychological."). In the medical field, taking a holistic picture of the child that allows the clinician to take into account overall functioning aids in problem identification, treatment, and aftercare planning and ultimately enhances the efficacy of treatment. As noted above, "there is a specific or actual additive constraint" caused by the existence of multiple impairments. NELSON & CROCKER, *supra*, at 607-08. Moreover, children with multiple disabilities that, on their own, are less than totally disabling may suffer as much or more than children who have a single, apparently more severe impairment. *See* RUDOLF & LEVENE, *supra*, at 284. Indeed, "perhaps the most common weakness in current diagnostic practice is the use of the child's worst or most salient problem as the main or only diagnosis." CAREY, *supra*, at 841.

Importantly, the trend in clinically evaluating children has been toward multidisciplinary assessment, a process that includes evaluation of all of the child's impairments, basic capacities, and rou-

tine functioning by a team of professionals and lay persons familiar with the child. *See, e.g.*, Severe and/or Multiple Disabilities, http://www.nichcy.org/disabilities/specific/pages/severe-multiple.aspx (last visited Dec. 29, 2009); M. VIRGINIA WYLY, INFANT ASSESSMENT 16 (1997) ("[The] trend in infant assessment is the development of a multidimensional, interdisciplinary approach"). A 2006 report from the National Joint Committee on Learning Disabilities reported that evaluation of a child depends on an integrated assessment of the child's function across domains. *See* NAT'L JOINT COMM. ON LEARNING DISABILITIES, LEARNING DISABILITIES AND YOUNG CHILDREN: IDENTIFICATION AND INTERVENTION 7 (2006), http://www.nasponline.org/advocacy/LDYoungChildren.pdf. No system of evaluation based on artificial constructs that disregard certain limitations of function has gained scientific support.

Instructively, the AMA Guides take into account any loss of function, no matter how slight. AM. MED. ASS'N, *supra*, at 9. Using a standard formula approach for factoring in multiple impairments, the AMA Guides consider the overall effect of the functional loss that the patient experiences in a medically and scientifically valid way. "The Guides' impairment ratings reflect the severity of the organ or body system impairment and the resulting functional limitations of the whole person." *Id.* at 21. This approach demonstrates the consensus within the medical profession that all functional loss must be taken into account in evaluating the effects of

impairments. *See, e.g.*, International Classification of Functioning, Disability and Health, http://www.who.int/classifications/icf/en (last visited Dec. 30, 2009).

In short, any comprehensive assessment of a child's impairments comporting with accepted medical and professional practices requires the evaluator to consider all of the child's impairments and their impact on that child's overall functioning. *See* Dennis P. Hogan et al., *Improved Disability Population Estimates of Functional Limitation Among American Children Aged 5-17*, 1 MATERNAL & CHILD HEALTH J. 203, 208 (1997) ("[O]f the 4 million children who have at least one serious functional limitation, 1.9 million additionally have one or more mild limitations in other types of functioning."). A procedure for making determinations about disability that forecloses a fair consideration of functional limitations that do not cross a certain threshold in severity is destined to discount serious limitations that may be masked by higher functioning in some select category of activities. Just like the SSA's earlier approach pre-*Zebley*, an approach that tries to limit a functional assessment to an artificial construct is bound to fail and create injustices that are unsupportable from a medical point of view.

The Social Security Act requires the SSA to consider the combined effect of all of a child's impairments throughout the disability determination process. § 1382c(a)(3)(G). While the current SSA policy requires the SSA to consider the interactive

and cumulative effects of all of a child's impairments *within* a domain of functioning, it fails to allow adequate consideration of the cumulative effect of combinations of impairments across the domains of functioning. This is clearly inconsistent with Congress' mandate as well as lacking in scientific support.

In sum, SSI is a critical resource for the impoverished families of children with serious disabilities. *See* OFFICE OF RETIREMENT & DISABILITY POLICY & OFFICE OF RESEARCH, EVALUATION, AND STATISTICS, SOC. SEC. ADMIN., ANNUAL STATISTICAL REPORT, 2008, at 50 (2009), http://www.ssa.gov/policy/docs/statcomps/ssi_asr/2008/ssi_asr08.pdf (71% of children receiving SSI benefits had no income other than their SSI payment). It is unfortunately common to find poor children who experience limitations in multiple domains. *See* Hogan et al., *Improved Disability*, *supra*, at 208. To find such children ineligible for benefits unless the limitations in one or more of those domains reaches a certain level, without regard to the overall impairment of the child, is inconsistent with commonly accepted medical practices and is arbitrary and irrational.

II. THE SECOND CIRCUIT'S DECISION IS CONTRARY TO CONGRESS'S COMMAND IN SECTION 1382c(a)(3)(G) AND CONTRARY TO THE COURT'S DECISION IN *ZEBLEY*

The relevant statutory provision in this case, 42 U.S.C. § 1382c(a)(3)(G), states as follows:

> In determining whether an individual's physical or mental impairment or impairments are of sufficient medical severity that such an impairment or impairments could be the basis of eligibility under this section, *the Secretary shall consider the combined effect of all of the individual's impairments without regard to whether such impairment, if considered separately, would be of such severity*. If the Secretary does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

§ 1382c(a)(3)(G) (emphasis added).

Congress enacted Section 1382c(a)(3)(G) in 1984. *See* Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460, § 4(b). Prior to 1984, the SSA (then part of the Department of Health and Human Services) had adopted sub-regulatory policies regarding the step two severity step that considered the combined impact of impairments only if the impairments separately rose to a certain level, and otherwise disregarded such impairments. The 1984 legislation rejected this approach

and the regulatory regime that threatened to "preclude realistic assessment of those cases involving individuals who have several impairments which in combination may be disabling." H.R. Rep. No. 98-1039, at 30 (1984) (Conf. Rep.), *as reprinted in* 1984 U.S.C.C.A.N. 3080, 3087-88; *cf. Bowen v. Yuckert*, 482 U.S. 137, 157 (1987) (O'Connor, J., concurring) (noting that "[e]mpircal evidence cited by respondent and the *amici* further supports the inference that the regulation has been used in a manner inconsistent with the statutory definition of disability.").

In *Zebley*, this Court was faced with a challenge to the SSA's failure to adopt a "comparable severity" test for adjudicating the disability cases of children. The statute required that children's cases be treated comparably with adults, which included a functional evaluation of all impairments in combination. In the face of on-going SSA resistance to Congress's directive, this Court, in 1990, rejected the SSA's methods for determining whether a child was eligible for SSI benefits because those methods did not provide the "individualized, functional approach" called for by Congress. *See generally Zebley*, 493 U.S. 521. *Zebley* held that, as part of SSA's mandate to assess "overall functional impact," *id.* at 531, the SSA is required under section 1382c(a)(3)(G) to give "individualized consideration" to the effect of combinations of all impairments at all stages of the disability determination process. *Id.* at 535 n.16.

Congress enacted additional legislation addressing childhood SSI benefits in 1996—continuing the approach set forth in § 1382c(a)(3)(G) of assessing all "functional limitations."[3] The Conference Report explicitly directed SSA to comply with section 1382c(a)(3)(G) and cited with approval this Court's finding in *Zebley* that SSA had been "remiss" in its childhood disability assessments in failing to "ensure that the combined effects of all the [child's] physical and mental impairments are taken into account" in the disability adjudication. H.R. Rep. No. 104-725, at 328 (1996) (Conf. Rep.), *as reprinted in* 1996 U.S.C.C.A.N. 2649, 2716. SSA then promulgated a series of regulations intended to implement the 1996 legislation, but included in sub-regulatory directives and training manuals SSA's current "non-combination" policy, which fails to account for the cumulative and interactive impact of less-than-marked limitations upon the overall level of functioning.[4]

Despite the clear directives of Congress and this Court, the current "non-combination" policy causes the SSA to do precisely what *Zebley* said Congress directed the SSA not to do: fail to consider the effects of certain impairments into the overall assessment of disability. The Second Circuit's rul-

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[3] *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 211(a)(4), 42 U.S.C. § 1382c(a)(3)(C)(i) (2006) (a child is "disabled" if he or she "has a medically determinable physical or mental impairment, which results in marked and severe functional limitations").

[4] *See* Pet. App. 9a; C.A. App. 1068, 1756-59.

ing upholding the "non-combination" policy cannot be reconciled with the law, and this Court should take action to resolve this error and make clear that the SSA's "non-combination" policy violates Congress's instruction in § 1382c(a)(3)(G) to consider the combined effect of all of a child's impairments.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

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